20-11- 2007

SUD BOSNE I HERCEGOVINE

СУД БОСНЕ И ХЕРЦЕГОВИНЕ

X - KRŽ/05/154

PRILOG BROJ 640

Number: X-KRŽ 05/154
Sarajevo, 4 October 2007

In the name of Bosnia and Herzegovina!

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting on the Panel of the Appellate Division consisting of Judge Azra Miletić as the Presiding Judge and Judges Finn Lynghjem and José Ricardo de Prada as members of the Panel, with the participation of the Legal Officer Lejla Fadilpašić as minutes-taker, in the criminal case against the Accused Ljubinac Radisav for the criminal offense of Crimes against Humanity in violation of Article 172 (1) d) and k) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the BiH CC), deciding upon the appeals filed respectively by the Prosecutor's Office of Bosnia and Herzegovina (hereinafter: the Prosecutor's Office of BiH) number KT-RZ-174/05 dated 11 May 2007 and the Defense Attorney for the Accused, lawyer Saša Ibrulj, against the Verdict of the Court of Bosnia and number X-KR-05/154 dated 8 March 2007, at the session held in the presence of the Prosecutor of the Prosecutor's Office of BiH, Mirsad Strika, the Accused himself and his Defense Attorney, lawyer Saša Ibrulj, on 4 October 2007 rendered the following:

VERDICT

Refusing as ungrounded the appeals filed respectively by the Prosecutor's Office of Bosnia and Herzegovina and the Defense Attorney for the Accused Radisav Ljubinac, applying Article II, Item 2, of the BiH Constitution, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and **Article 283 c) of the Criminal Procedure Code of Bosnia and Herzegovina**, the Verdict of the Court of Bosnia and Herzegovina number X-KR-05/154 dated 8 March 2007, **is hereby revised as follows:**

The following charges against Radisav Ljubinac, a.k.a. "Pjano", son of Veselin, and Milka, née Rajak, born on 12 January 1958, in the village of Ćemanovići, Municipality of Rogatica, residing in the place of Padinska skela – Nova 48, Municipality of Palilula – Beograd, Serbia, Serb by ethnicity, citizen of BiH and Serbia, personal identification number: 1201958173260, car mechanic by occupation, unemployed, married, father of two adult children,

ARE HEREBY DISMISSED

That:

1. As part of a widespread or systematic attack by the army and the police of the so-called Serb Republic of Bosnia and Herzegovina and paramilitary units under the leadership of the SDS, aimed against the civilian Bosniak population in the area of the Municipality of Rogatica, *in early* August 1992, together with certain Macola and other soldiers, he seized gold and other valuable objects from the civilians detained at the *SSC Veljko Vlahović* in Rogatica while they were "examined" at one room of the *SSC Veljko Vlahović*;

Whereby he would have committed the criminal offense of Crimes against Humanity in violation of Article 172 (1) h) in conjunction with k) of the Criminal Code of Bosnia and Herzegovina.

Pursuant to Article 138 (3) of the BiH CPC and Article 56 of the BiH CC, the time the Accused spent in custody, commencing on 16 December 2005 until he was referred to serve the sentence, shall be credited towards the sentence of imprisonment.

The other parts of the Verdict remain unchanged.

REASONING

By the Verdict of the Court of Bosnia and Herzegovina (hereinafter: the Court of BiH) number X-KR-05/154 dated 8 March 2007 the Accused Radisav Ljubinac was found guilty of the criminal offense of Crimes against Humanity in violation of Article 172 (1) d) and k) of the BiH CC committed by the acts described in sections 1 through 3 of the convicting part of the operative part of the Verdict, and for the above mentioned criminal offense he was sentenced to 10 years of imprisonment. *Pursuant to Article* 284 c) of the BiH CPC he was acquitted of the charges that he committed the actions described in three sections of the acquitting part of the Verdict concerned.

The first instance panel, by applying Article 56 of the BiH CC, credited the time the Accused spent in custody, commencing on 20 December 2005, towards the sentence of imprisonment, while pursuant to Article 188 (4) of the BiH CPC it relieved him of the duty to reimburse the costs of the criminal proceedings.

Pursuant to Article 198 (2) of the BiH CPC, the injured parties were referred to take civil action with their claims under property law.

The Prosecutor of the Prosecutor's Office of BiH, Mirsad Strika, and Defense Attorney for the Accused Radisav Ljubinac, lawyer Saša Ibrulj, filed timely appeals from the Verdict.

The Prosecutor contests the Verdict for incorrectly and incompletely established facts, the decision on the sentence and the costs of the criminal proceedings, proposing to the Appellate Panel to grant the appeal, reverse the contested Verdict and render a decision finding the Accused guilty of all the criminal offenses he is charged with under the amended indictment, and punish him according to the law.

By the appeal of the Defense Attorney, the Verdict is contested for all the grounds on appeal, and the proposal is made to the Appellate Panel to grant the appeal and order a trial before the Panel concerned and, following a proper evaluation of the state of the facts, acquit the Accused of all the charges.

At the session of the Appellate Panel, held on 4 October 2007, pursuant to Article 304 of the BiH CPC, both parties briefly presented their appeals and their replies to the appeals, and fully supported their arguments and proposals.

Following a review of the contested Verdict insofar as contested by the appeals, the Appellate Panel rendered the decision as stated in the operative part for the following reasons:

In the appeal, the Defense Attorney states that he contests the Verdict for essential violations of the criminal procedure provisions referred to in Article 297 of the BiH CPC, however, when explaining the said argument for the appeal he points to the alleged erroneous application of substantive law, that is, the application of the BiH CC instead of the CC of SFRY, which constitutes the argument for the appeal referred to in Article 298 of the BiH CC. Given that the appeal does not contain a reasoning of this ground for the appeal at all, that is, it does not specify the essential violation of the criminal procedure code referred to in Article 297 (1) a) through k) of the BiH CPC nor how is it reflected, there was no possibility for the Court to review the grounds of this argument for the appeal by the defense.

The argument of the appeal indicating the violation of the criminal procedure code referred to in Article 298 of the BiH CPC because the Court applied the BiH CC instead of the CC of SFRY which was applicable at the time of perpetration of the criminal offense and which, according to the Defense Attorney, is more lenient to the perpetrator, is also ungrounded. In reference to the application of substantive law in the Verdict, the first instance Panel submitted extensive and valid reasons due to which it applied the BiH CC to the concrete acts of the Accused. This Panel accepts as a whole the arguments presented in respect to the departure from the principle of legality and the time constraints regarding the applicability of the criminal law, in reference to the status of crimes against humanity pursuant to international customary law as well as in reference to the conclusion that the sentence pronounced is in any case more lenient than the death sentence which was applicable at the time of the commission of the criminal offence. Therefore, the Panel is of the opinion that the arguments of the appeal are not sufficient to contest the extensive and detailed reasoning submitted by the first instance Panel in that respect.

Both the Prosecutor's Office and the Defense are contesting the Verdict for the incorrectly and incompletely established facts, specifically the Prosecutor in respect to the acquitting part of the Verdict and the Defense Attorney in respect to the convicting part of the Verdict. Considering the presented arguments of the appeals, the Appellate Panel finds that they are ill-founded in their entirety.

[redacted]

Explaining the above mentioned grounds for the appeal, the Defense Attorney indicates that the Accused did not commit the criminal offense he was found guilty of, i.e. that he acted upon the order of military and police authorities, that he just performed the job of a driver, that at the time relevant to the indictment he was not a member of the Serb Army at all. As the evidence corroborating this argument, he refers to the Certificate of the BiH Ministry of Defense.

Contrary to the quoted arguments of the appeal, this Panel is of the opinion that the first instance Panel evaluated correctly and comprehensively both the physical evidence and the testimonies of the witnesses heard, and based on the content the court made the correct conclusion regarding the participation and the responsibility of the Accused for the criminal offense he was found guilty of. The arguments of the appeal that at the time relevant to the Indictment the Accused was not a member of the Serb Army is in the first place ungrounded and also contradictory to the physical evidence of the Prosecutor's Office of BiH, as follows: Order of the Commander of the Drina Corps of 28 June 1994, List of Reserve Military Officers, deployed at the Military Post 7084, and particularly the Proposal for the promotion of Ljubinac Radisav into the rank of Reserve Sergeant 1st Class, of 30 May 1994, which clearly result in the fact that the Accused was a member of the Army of Republika Srpska as of 20 May 1992, that he was promoted to the rank of Sergeant on 22 December 1991, while the Certificate of the BiH Ministry of Defense of 15 November 2006, which the defense refers to and which confirms that the Accused was engaged in the war in the capacity of a soldier, according to the data of the Ministry of Defense Department in Rogatica during the period from 17 August 1993 to 6 June 1996, does not challenge the authenticity and credibility of the facts arising from the above mentioned evidence. Besides, the Accused does not dispute at all that he was present in the territory concerned and at the time relevant to the Indictment and that he performed the job of a driver, given that he is of the opinion that his role of a "driver" excludes the possibility of perpetration of the criminal offense for which he was found guilty of. Further in the text of the reasoning the Appellate Panel is going to give its conclusion about the above mentioned. However, it is necessary to emphasize that the membership of the Accused in a military or police formation is irrelevant for adjudication in this legal matter because the aforementioned is not the capacity which would constitute a significant element of the criminal offense of Crimes against Humanity. The important thing is, as correctly ruled in the first instance Verdict, the knowledge of the Accused of the widespread and systematic attack aimed at civilians and the fact that his acts, by their character, integrated fully in the attack and constituted its part. The arguments that the Accused acted exclusively upon the orders, that he is an "outsider", a person from the margins of society and a laid-off worker cannot relieve him of the responsibility for the consequences that resulted from his acts. On the other hand, his role as a "driver" during the course of a forcible transfer of a population, in addition to the fulfillment of the other above mentioned elements of the criminal offense and his awareness that he was committing the prohibited act and the willingness to do it, make the Accused a co-perpetrator in the commission of the criminal offense that he was found guilty of under section 1.

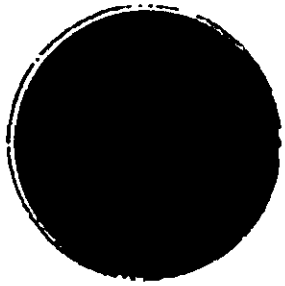
Also, the arguments that the witnesses Muhidin Kapo and Šemso Vatreš, who testified about the circumstances referring to section 2 of the convicting part of the Verdict, gave their statements falsely and without objectivity, contrary to the Accused, whose testimony, as deemed by the Defense Attorney, was quite convincing, proved to be arbitrary. Evaluating the testimonies of the said witnesses, the Appellate Panel also finds that they are consistent and very convincing, both in respect to the identity of the person who physically abused them and individual events and acts undertaken by the Accused.

[redacted]

So, the witness Muhidin Kapo has no doubts at all about the identity of the person who abused him in the Rasadnik camp given that he knew him before the war, and except for the name of the Accused he also knows his family situation and even the name and occupation of his father. The witness was detained in the same room with Muhamed Pleho and gave to the Court a very clear and precise description of the situation when and where the Accused had beaten him and Muhamed Pleho. The credibility and the authenticity of his testimony are additionally corroborated by the fact that the witness clearly sets apart the situation when the Accused gave him a cigarette, stressing that he did not beat him on that occasion, which results in the fact that the witness had no intention to charge anyone without grounds. Likewise, in his testimony he indicates, for example, that Rajko Kušić had never "lay a finger on him". Also, the witness Šemso Vatreš specifically identifies the Accused as the person who had beaten him up on two occasions, and explains that the Accused, together with several other persons, was beating him in Rasadnik and that he punched him and kicked him with his boots. The testimonies of these witnesses are corroborated by the testimony of the witness B who, through the door of the room where she was accommodated in Rasadnik, saw when the Accused was beating Bećir Ćutahija and Šemso Vatreš, and the witness Alija Isaković who also watched when the Accused punched Bećir Ćutahija. The testimony that the Accused gave in the capacity as witness is completely opposite, not only to the testimonies of the above mentioned witnesses, but also to the testimonies of all other witnesses who were heard and who were detained in Rasadnik. The Accused claims that he had never entered the said premises or seen Muhidin Kapo, Šemso Vatreš and Bećir Ćutahija in Rasadnik. When describing the conditions in Rasadnik he indicates that 90% of people came there voluntarily, that he does not know whether they could leave it freely (although he is not denying that the guards were present at the gate), that they were receiving fruit regularly, that it was actually a collection center. Except for the expected denial of any participation in the acts he is indicted for, in his testimony the Accused claims that he was not interested at all in why numerous civilians had been in Rasadnik, who brought them there, what happened to them, which, in addition to the fact that his testimony is absolutely opposite to the testimonies of all other witnesses, in the opinion of this Panel clearly suggests the conclusion that it is directed to evade criminal responsibility and, as such, it is unreliable and insufficient to challenge the authenticity of the testimonies of all other witnesses.

The arguments of the appeal that the Accused is charged with persecution on national, religious and political grounds, and that the prosecution did not submit a single piece of evidence as a confirmation, is irrelevant, given that the Accused Radisav Ljubinac was not found guilty of the persecution under Article 172 (1) h) of the BiH CC but of the forcible transfer of population and other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to physical or mental health under Article 172 (1) d) and k) of the BiH CC.

Also, there are no grounds for the arguments of the appeal that the operative part of the Verdict is incomprehensible, that is, that from the operative part it cannot be seen which offenses the accused was found guilty of, and which he was acquitted of, because the introductory parts of the factual description refer to the existence of a widespread and systematic attack on the civilian population are identical in both the convicting and acquitting parts of the Verdict.



In other words, the existence of a widespread or systematic attack aimed at any civilian population and the knowledge of the Accused of such an attack, constitute general elements of the criminal offense of Crimes against Humanity, which have to be met in order for the individual criminal actions referred to in subparagraphs a) through k) of the said Article to be qualified as the above mentioned criminal offense at all and not as a "common" criminal offense of murder, rape or something else. Consequently, the acquitting part of the Verdict refers to some criminal actions within the criminal offense of Crimes against Humanity, so adducing the entire factual description of the criminal offense both in the convicting and the acquitting parts of the Verdict does not make it incomprehensible but absolutely clear and definite.

Furthermore, the statement by the Defense Attorney for the Accused that the first instance Verdict was not signed by the Presiding Judge but by Judge Tore Lindseth as a member of the Panel, is correct, but it does not constitute the violation of provisions of any substantive or procedural law, considering that the Presiding Judge, due to absence, could not sign the written copy of the Verdict. Article 39 (1) of the Rules of Procedure stipulates that if the Presiding Judge is prevented to sign a decision, one of the panel members shall sign it instead of the Presiding Judge.

The arguments of the appeal of the Prosecutor's Office of BiH, stressing the fact that the first instance Panel, based on the state of the facts being erroneously or incompletely established, acquitted the Accused of the charges that by the actions described in three sections of the acquitting part of the operative part of the Verdict he has committed the criminal offense he is charged with under the amended Indictment, are also ungrounded.

In reference to Section 1 of the acquitting part of the Verdict, not even the Prosecutor himself disputes that "none of the witnesses saw that the injured party, Nurija Zimić, entered the house of the Accused Radisav Ljubinac or that he was interrogated by the Accused" but he draws the conclusion on his responsibility for the disappearance of the injured party based on the fact that the Accused was part of the military authorities in Seljani, that at the critical time he was the commander of the pioneer platoon, which, according to the arguments of the appeal, means that he had the authority to order his subordinates to bring him certain persons for interrogation.

However, opposite to such a position of the Prosecutor's Office, the Appellate Panel is of the opinion that in the concrete case it is not possible to establish a cause-and-effect relation between the taking away and the disappearance of the injured party, as correctly concluded by the first instance Panel. The information of the witness Mujo Zimić that his father had been taken to the Accused for interrogation is based on what he learned indirectly from Ramiz Mednoluđanin. And Ramiz had learned indirectly from some unidentified persons that the injured party was allegedly taken to Radisav Ljubinac, while the witness Nazif Zimić in his testimony states that he heard Ramiz Mednoluđanin telling the injured party that the Accused had ordered him to go for an interrogation. Based on the state of the facts established in this manner, it is impossible to find out positively whether the Accused was really taken for interrogation by the Accused and in particular whether he killed him. In reference to the facts constituting the elements of the criminal offense concerned, the Court has an obligation to establish them beyond any doubt, therefore, in particular considering the *in dubio pro reo* principle, the conviction can in no way be based upon the assumptions as suggested by the appeal of the Prosecutor's Office.

[redacted]

Based on the aforementioned, it arises that the Prosecutor's Office failed to collect sufficient evidence that the Accused has committed the actions he is charged with under this Count, thus pursuant to Article 284 c) of the BiH CPC, the first instance Panel correctly acquitted the Accused.

Also, the pieces of evidence presented on the circumstances referred to in section 2 of the acquitting part of the operative part of the Verdict are evaluated thoroughly and correctly. They refer to the alleged participation of the Accused in the separation and the taking away of 15 civilians on 3 June 1992, who were thereafter killed. Their bodies were exhumed in October 2004 from a mass grave on the location of Dizdareva njiva, near the house of Ljubinac Radisav. The witnesses Mujo Zimić, Enisa Zimić, Habiba Ramović, Osmana Jašarević, Ramiza Halilović, Nazif Zimić, Amor Mašović and the witness under pseudonym "C" testified about the said event.

Based on the testimonies of the above mentioned witnesses, it arises irrefutably that on 3 June 1992, the attack of the Serb Army on the village Seljani started, that the armed members of the army rounded up a large number of civilians from that village and brought them to the house of Sulejman Ćurevac where they separated the men from the women. A total of 15 separated men were then taken away and killed, while their bodies were later exhumed on the location of Dizdareva njiva.

However, the presence and the participation of the Accused in the said separation and subsequent taking of 15 men-civilians from that group, who were thereafter killed, proved to be disputable. The Accused is charged with these actions under this section.

Specifically, the witnesses Enisa Zimić and Osmana Jašarević were captured on the relevant occasion but they could not say with certainty whether the Accused was actually present during the separation and taking away of the above mentioned persons. On the other hand, the witness Habiba Ramović stated clearly that on 3 June 1992 she did not see the Accused in Seljani. In his testimony the witness Mujo Zimić states that from half past two when the shelling started until five o'clock, which is the time period within which the capturing and the taking away of the villagers to the house of Sulejman Ćurevac took place, he did not see the Accused, but rather he heard from Slavko Vasiljević and Goran Ljubinac that the Accused ordered the killing of the detained civilians. Of the witnesses who were in the detained group, the witness C was the only one who stated that she had seen the Accused, that is, that the Accused participated in the said separation and that everything was done under his order. The witness Nazif Zimić watched the entire event from the forest, at the distance of 200-300 meters, and in his testimony he stated that he saw the Accused in front of the house of Sulejman Ćurevac and that he saw when a group was separated from the above mentioned men and taken away by 10 soldiers, including, as he testified, the Accused.

Based on the state of the facts established in this manner, the Court cannot establish with certainty whether the Accused actually participated in the separation and the taking away of 15 civilians, men, whose bodies were thereafter exhumed from the mass grave on the location of Dizdareva njiva. That is, by evaluating the testimonies of the above mentioned witnesses, which are obviously contradictory as regards the decisive fact - presence of the Accused on the relevant occasion in Seljani - the Court took into consideration that only the witness G— from the group of the detained civilians in her testimony indicates that the Accused supervised the process of separation and that everything was done under his order.

However, the Panel finds that in that case the other witnesses who were present there had to see the Accused, as the person giving orders and coordinating the activities of the others. Given that in their testimonies Enisa Zimić, Osmana Jašarević, Habiba Ramović and Mujo Zimić did not corroborate the statement of the witness C, the Court could not give full credence to this part of her testimony. The Panel further finds that the testimonies of these witnesses, due to the fact that these are directly detained persons, are more authentic and reliable than the testimony of the witness Nazif Zimić, who watched the entire event from the side, that is, from the forest at some 200-300 meter distance.

Given the above mentioned, and lacking other corroborating evidence, the Court could not, with certainty, find whether the Accused has committed the acts he is charged with under this section. So, having the obligation to resolve by the verdict and in a manner more favorable to the Accused any doubt in reference to the existence of the facts constituting elements of the criminal offense, in reference to this section of the Verdict and lacking the evidence, he should have been acquitted of the charges, as correctly done by the first instance Verdict.

Then, in reference to section 3 of the acquitting part of the Verdict, the Appellate Panel shares the findings of the first instance Court that, based on the presented evidence, specifically the contents of testimonies of the witnesses Alija Isaković and Enver Bešlija, it is not possible to establish positively whether the Accused took any concrete activity which, according to its content, would constitute a physical and direct perpetration of the criminal offense of murder within the criminal offense of persecution as Crimes against Humanity, in a manner as specified in the operative part of the Verdict.

As regards the above mentioned, the contested Verdict correctly states that based on the testimony of the witness Alija Isaković, who was watching when a certain Macola and another man, for whom he found out later that it was Radisav Ljubinac, took away Mustafa Bešlija from the *SSC Veljko Vlahović*; it is not possible to conclude with certainty that the Accused killed him. None of the witnesses heard saw that the Accused killed the injured party, while the evidence presented indirectly such as the testimony of the witness Enver Bešlija, who stated that he had heard that his brother had been taken out of the camp and killed by Macola's people, is not sufficient for the Court to conclude with certainty that the Accused killed the injured party, that is, that he is responsible for his disappearance.

In the light of the aforementioned, the argument of the Prosecutor's Office that the Accused "failed to offer as part of his defense a single piece of specific evidence corroborating the averment that he did not participate in the taking away and disappearance of the dentist" is not acceptable given that the burden of proof of the facts contained in the Indictment lies with the Prosecutor's Office, while the presumption of innocence is applied to the Accused which, pursuant to the above mentioned, he is not bound to prove.

Contrary to the arguments of the appeal of the Prosecutor's Office, the Appellate Panel deems that the pronounced sentence of ten years of imprisonment is adequate to the degree of criminal liability, the motives for perpetrating the offence, the degree of danger to the protected object, and the personal situation of the Accused, and that it will achieve the purpose of criminal sanctions and punishment. In this respect it is necessary to point out that the knowledge and willingness to commit the criminal offense may appear with different intensities within the same form of guilt, as correctly noted in the first instance Verdict by concluding that the Accused, in the concrete case, did not have a high level of intent;

It is also important to consider the fact that he was not the organizer or leader of the entire criminal activity, which also has to reflect on the duration of the imposed sentence. Although the Prosecutor is right when stating that excessive drinking before the war cannot be taken as a mitigating circumstance on the part of the Accused when meting out the punishment (in particular if we take into consideration that, according to the findings and opinion of the expert witness, his capacity to comprehend the gravity of his actions and to control his actions at the time of perpetration of the criminal offense was not diminished significantly) and that four persons taken to be used as human shields were underage, the Appellate Panel is of the opinion that the pronounced sentence is correctly meted out and that it will achieve the purpose of punishment referred to in Article 39 of the BiH CC.

The Panel also refused as ungrounded the objection of the Prosecutor's Office of BiH referring to the fact that the Accused is relieved of the duty to reimburse the costs of the criminal proceedings, being of the opinion that the first instance Panel held correctly that the Accused is unemployed and that his four member family is supported by the wife's salary in the amount of KM 250 per month, which indicates the conclusion that he is indigent and that he has no funds to reimburse the costs concerned.

In reference to the dismissing part of the Verdict, the Appellate Panel, reviewing the case file, found that the Indictment of the Prosecutor's Office of BiH number KT RZ-174/05 dated 8 May 2006, which was confirmed by the Preliminary Hearing Judge on 15 May 2006, the Accused was indicted that, by the actions described in Counts 1 through 8, he has committed the criminal offense of Crimes against Humanity under Article 172 (1) h) in conjunction with a), d), e) and k) of the BiH CC.

By the amended Indictment of the Prosecutor's Office of BiH number KT RZ-174/05 dated 31 January 2007, filed during the main trial, the Prosecutor withdrew Count 6 of the original Indictment while Counts 6 and 7 were merged into new Count 4 of the amended Indictment.

Article 283 c) of the BiH CPC regulates that the Court, if the Prosecutor withdraws the charges between the beginning and the end of the main trial, shall hand down the verdict dismissing the charges.

In the concrete case, the Court did not act pursuant to the Article quoted above and it failed completely to rule on Count 6 of the Indictment. As a result, both the operative part and reasoning of the first instance Verdict do not contain the facts related to the said event, and from the Verdict it can not be seen whether the Accused has ever been prosecuted or tried for the offense described in the Count concerned.

Although Article 306 of the BiH CPC stipulates that the Panel of the Appellate Division shall review the verdict only insofar as it is contested by the appeal, and the appeals filed by the Prosecutor's Office of BiH and by the Defense do not object to such actions of the Court, the Appellate Panel concluded that a disregard of such an obvious error of the first instance Verdict would constitute the violation of the right of the Accused to a fair trial. Therefore, the Panel decided by direct application of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to decide *ex officio* on this part of the Indictment as well, in the manner prescribed by the law and at the same time more favorable to the Accused. The Panel also took into consideration that by rendering the second instance Verdict, the criminal proceedings against the Accused would become final, and that he will not have the possibility to contest the rendered decision by any legal remedy, therefore, he will not be able to subsequently point to the stated failure.

[redacted]

The Appellate Panel finds the grounds for revision of the first instance Verdict in the part not contested by the appeal, primarily in the provision of Article II Item 2 of the Constitution of Bosnia and Herzegovina which regulates that the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) and its Protocols shall apply directly in Bosnia and Herzegovina and have priority over all other law. The ECHR in its Article 6 stipulates that everyone is entitled to a fair trial, where the principle concerned applies to the proceedings as a whole and implies a lawful conduct of proceedings and rendering of a decision based on law.
Considering that in the concrete case it is indisputable that all the legal requirements under Article 283 c) of the BiH CPC are met, the Appellate Panel holds that rendering the verdict dismissing the charges under this Count of the Indictment provides for the full and correct application of the rights in a manner not detrimental to any of the parties to the proceedings, while respecting the principle of a fair trial in terms of Article 6 of the ECHR.

Further, at the same time the Appellate Panel, by reasons of efficiency, corrected the obvious mistake of the first instance Panel in reference to the calculation of custody, as indicated by the Defense Attorney at the session of the Appellate Panel, given that according to the first instance Verdict the time that the Accused spent in pre-trial custody as of 20 December 2005 onwards was credited to the pronounced sentence of imprisonment, while from the Decision on Ordering Custody number X-KRN-04/154 dated 20 December 2005 it arises that the Accused was in custody as of 16 December 2005.

Pursuant to above mentioned and according to Article 310(1) in conjunction with Article 313 of the BiH CPC, by directly applying Article 6 of the ECHR, it has been decided as stated in the operative part of the Verdict.

Minutes-taker
Lejla Fadilpašić
[signature affixed]

Presiding Judge
Azra Miletić
[signature affixed]

REMEDY: An appeal from this Verdict shall not be allowed.

[redacted]

I hereby confirm that this document [redacted] *Croatian/Serbian.*
Sarajevo, 15 November 2007
[redacted] *Certified Court Interp*[redacted]*ge*